

J. K. KENDRICK

IBLA 80-445

Decided October 31, 1980

Appeal from decision of Colorado State Office, Bureau of Land Management, declaring Vanadium No. 1 and Redwing mining claims abandoned and void.

Affirmed.

Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statutory and regulatory requirements to file a notice of location are mandatory and failure to comply with them must result in a finding that the claims are void.

APPEARANCES: H. W. Koonce, Jr., Esq., Brooks, Miller, and Brooks, Montrose, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

J. K. Kendrick appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 1, 1980, declaring the Vanadium No. 1 and Redwing mining claims abandoned and void.

BLM stated that its office was returning the documents pertaining to the unpatented mining claim locations filed for recordation. BLM held that in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations under 43 CFR 3833, appellant's documents could not be accepted for recordation because a copy of the notices or certificates of location was not filed. BLM stated that under 43 CFR 3833.4(a), failure to file such instruments as required by 43 CFR 3833.1-2(a), (b), (c), and (d) and 3833.2-1 within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

In his statement of reasons, appellant explains that pursuant to FLPMA, supra, he filed certain documents with BLM on October 22, 1979, but inadvertently failed to file the location certificates for the mining claims. Appellant contends that all pertinent information which is contained upon the location certificates was contained or otherwise indicated on the documents which were submitted; that this information is sufficient to fulfill the immediate notice requirements to the United States of the validity and location of the two mining claims; that the information substantially complies with the intent and purpose of the statute; that, in essence, appellant submitted the required information, although it was not submitted on a document entitled "Certificate of Location"; that such a technical deficiency is an insufficient basis upon which to declare an abandonment of appellant's property interest.

[1] Section 314(b) FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal land, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate

of location [of the claim or site, a certificate of location 1/ ] containing the information in paragraph (c) of this section shall be filed.

The statutory and regulatory mining recordation requirements are mandatory and failure to comply with them must result in a finding that the claims are void. G. R. Marquardson, 49 IBLA 114 (1980); Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980); Walter T. Paul, 43 IBLA 119 (1979).

The information contained in the documents submitted by appellant did not embody the same information which is required in notices of location. This requirement is prescribed by FLPMA and the regulations issued pursuant to it. Also, while it is true that BLM may be on notice as to appellant's mining claim by virtue of the information filed, BLM should not be charged with the duty of finding the pertinent data in the documents. BLM has received thousands of mining claims to be recorded. The sheer volume of filings dictates that efficient methods be employed to record the claims under FLPMA. This is not possible unless all of the required information is in proper form.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Joseph W. Goss  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

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1/ The bracketed language was omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

